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U.S. District Court
Northern District of California

San Francisco Technology Inc.

Plaintiff

vs.

Pfizer Inc.

Defendant

Case No. CV 10- 5597 MEJ

**Complaint**

**Demand For Jury Trial**

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*Qui tam* relator San Francisco Technology Inc. ("SF Tech") files this Complaint against defendant Pfizer Inc. ("Pfizer") and alleges as follows:

**Nature of Action**

1. This is a *qui tam* action to impose civil fines for false marking. As alleged further below, Pfizer has falsely marked articles in violation of 35 U.S.C. § 292 and must be civilly fined for each offense: "Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article, the word 'patent' or any word or number importing that the same is patented, for the purpose of deceiving the public ... Shall be fined not more than $500 for every such offense." Pfizer has falsely marked products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Pfizer falsely marked articles with intent to deceive the public.

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**Parties**

2. Plaintiff San Francisco Technology is a Delaware corporation with its principal place of business in San Jose, California.

3. Upon information and belief, Pfizer is a Delaware corporation with its principal place of business at 235 E. 42nd Street, New York, NY 10017.

**Jurisdiction & Venue**

4. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and 1355(a).

5. Venue is appropriate in this District under 28 U.S.C. §§ 1391(b) and 1395(a).

6. Upon information and belief, this court has personal jurisdiction over Pfizer because Pfizer has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic. Upon information and belief, Pfizer has designated an agent for service of process in California: CT Corporation System, 818 W 7th Street, Los Angeles, CA 90017.

**Intradistrict Assignment**

7. This case is appropriate for District-wide assignment under Civil Local Rule 3-2(c)

because the claims in this Complaint arise under 35 U.S.C. § 292, which is codified with the patent statutes.

**Pfizer's False Marking**

8. SF Tech incorporates by reference all above allegations.

9. Upon information and belief, Pfizer makes and sells many types of products, including Advil Ibuprofren Caplets (the "Pfizer products").

10. Pfizer causes or contributes to the marking and advertising of products with the U.S. Patent No. 5,087,454 including, but not limited to, the Pfizer products.

11. Pfizer individually marks the packaging of its Advil Ibuprofren Caplets with U.S. Patent No. 5,087,454.

12. U.S. Patent No. 5,087,454 is an expired patent. Upon information and belief, U.S. Patent No. 5,087,454 expired no later than July 31, 2010.

13. Pfizer's falsely marked products are being sold in 2010 with such false markings, after the expiration of U.S. Patent No. 5,087,454.

14. Pfizer is a sophisticated company and has many years of experience applying for, obtaining, and maintaining patent rights. Pfizer also has extensive experience manufacturing products and either marking or not marking them with words or numbers indicating that such products are protected by patents or pending applications.

15. Pfizer (including Pfizer's patent counsel) knew or should have known that the term of U.S. Patent No. 5,087,454 expired no later than its expiration date.

16. Pfizer is no longer paying maintenance fees to the United States Patent and Trademark Office to maintain U.S. Patent No. 5,087,454.

17. Pfizer knew or should have known that U.S. Patent No. 5,087,454 had already expired at the same time Pfizer was marking and advertising products with U.S. Patent No. 5,087,454.

18. Pfizer knows, or reasonably should know, that U.S. Patent No. 5,087,454 does not protect the Pfizer products, or any products whatsoever.

19. Pfizer could have no reasonable belief that it was proper to mark and advertise products with the numbers of the expired U.S. Patent No. 5,087,454, and the false marking was done

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with intent to deceive the public by, including, but not limited to, misusing its patent rights to extend the term of its patents and inhibiting competition.

20. For at least the reasons set forth herein, Pfizer has wrongfully and illegally advertised patent rights which it does not possess, and, as a result, has likely benefited in at least maintaining its market share in the marketplace.

21. For at least the reasons set forth herein, Pfizer has wrongfully and illegally advertised patent rights which it does not possess, and, as a result, has likely caused the retail price of its Pfizer products to be inflated above normal market levels, and has caused the public to face inflated prices for its products.

22. The public deception, and/or competitive harm caused by each of Pfizer's false markings has and continues to harm the United States and the public, including relator SF Tech, a representative of the public incurring the cost and time associated with this enforcement.

**Demand For Judgment**

SF Tech demands judgment against Pfizer, as follows:

1. A declaration that Pfizer violated 35 U.S.C. § 292.

2. An accounting of the number, sales, and revenue of any falsely marked articles not presented at trial.

3. A civil fine of $500 for each offense — half paid to the U.S., and half paid to SF Tech.

4. Costs, including attorney fees.

5. A finding that this is an exceptional case.

6. Any other relief the court deems appropriate.

**Demand For Jury Trial**

SF Tech demands a jury trial on all issues so triable.

Date: December 8, 2010

Mount & Stoelker, P.C.,
/s/ Dan Fingerman
Counsel for San Francisco Technology Inc.